

matter back to the property owner to get additional information as discussed at the December 19, 2013 meeting, including information on the Internal Rate of Return and documentation from the MDEQ that the applicant is an innocent landowner, so the BRA can make a determination as to whether the Plan is economically viable under the BRA's parameters.

A motion was made by Morita, seconded by Turnbull, that this matter be Postponed. The motion carried by the following vote:

Aye 5 - Stanley, McGarry, Turnbull, Chalmers and Morita

Absent 2 - Sera and Justin

Chairperson McGarry stated for the record that the motion had passed unanimously.

2013-0393 Review BRA Policy Statement

(Reference: Brownfield Policy dated December 2013 had been prepared by Tom Wackerman of ASTI Environmental and by reference became part of the record thereof).

Mr. Wackerman stated that the Brownfield Policy submitted for review had been updated following the BRA's working meeting in October 2013. An issue that was discussed a lot was the opening paragraph and whether or not it was consistent with both the Authority's charge and with what they wanted to do in the future, so he made it very generic. The BRA had to determine whether or not the Policy was consistent with its By-Laws and whether it said what they wanted to accomplish. He referred to page four, and said that he was still waiting for the State to tell him whether or not the BRA could collect Revolving Loan Funds during the reimbursement period. It was interesting to him that neither the MEDC nor the MDEQ wanted to comment on it. They kept bumping him back and forth to the same people, and he did not have a decision for that yet.

Ms. Morita asked if it was just a matter of statute or a matter of policy. Mr. Wackerman stated that the statute was silent on the issue, and he wanted to see what the policy decision was at the MEDC and the MDEQ, and he did not think they had thought it through or knew. He was not sure what the next step was for that.

Mr. Breuckman asked at what point they should just do it and make them confront it. Mr. Wackerman thought that was a great strategy. He did not see anything in the law that said they could not, but he indicated that he

was not an attorney. The City Attorney would have to look at it. Mr. Wackerman said that he tended to recommend that communities should defer to the MEDC and the MDEQ when it came to policy and follow their lead, but there was no lead to follow.

Ms. Morita brought up historic properties and read, "the inclusion of blighted, functionally obsolete and historic properties." They discussed at the last meeting what the authority was for including historic properties as opposed to those just blighted, functionally obsolete or environmentally contaminated. Mr. Wackerman said that the authority was that it was now included in the definition of brownfields under Act 381. An historic resource could be included as a brownfield in the same way as functionally obsolete and blighted properties could. He added that the definition of an historic resource under the Act was defined in section 90-A of the Michigan Strategic Fund Act.

Ms. Morita questioned whether it should say historic resource property as opposed to historic property (top of page five). Mr. Wackerman agreed that it should say "historic resource," so that it was consistent with the Act. Ms. Morita did not want there to be confusion between an historic resource and something of sentimental value. Mr. Wackerman assured that he would make it globally consistent. He asked the Board if they wanted to go through each change. Ms. Morita said that she did not need to, and she commented that Mr. Wackerman had done a nice job.

Ms. Morita asked about timing, and when an applicant had to get everything completed. She wondered if the Board had discussed allowing an applicant five-and-a-half years. Mr. Wackerman said that they did not discuss the duration - they discussed the concept. If they added all the timeframes, it gave an applicant almost nine years to get a project done, and he asked the Board if they felt that was reasonable. In light of normal operating conditions, he suggested that they might want to tighten those. It did not say that an applicant could not come back and refresh; it was just the performance expectations. Ms. Morita said that the concern from a neighboring property owner's perspective was that if there was a contaminated site that was open and could be worked on for eight or nine years, it could be detrimental to the neighboring properties. She said that she would like to see a shorter timeframe. She would not want an open hole in her backyard for a long period of time. Mr. Wackerman mentioned the Softball City site, which had been going on for a long time. If they finally started remediating it, it might take all that time. There were a couple of key sites like that in the Landfill Planning Area. He thought they would have to have some sort of a re-up. Ms. Morita thought that

should be required, so the City had some control and could impart some urgency to get sites closed. She was thinking of the site across from Softball City where there were barrels that had to be pulled out of the ground. It used to be a superfund site, and it was right next to a residential neighborhood. She would not want that open and have people do a day's work of construction a month for four or five years there, which she stated would be awful for the neighbors. Mr. Wackerman said that he would encourage the Board to tighten it up, because the opening prepositional phrase gave the ability to deal with sites like that. They could negotiate the longer ones in writing. His expectation would be that construction should start within two years of signing the reimbursement agreement and be completed within four. Ms. Morita asked what would happen if an applicant gave a ten-year, estimated completion date. Mr. Wackerman said the applicant would be allowed 11 years the way the Policy was written. Chairperson McGarry asked if they would have the ability to approve or disapprove based on the length. Mr. Wackerman said that they would always have the ability to re-negotiate any of the terms for which they were giving incentives.

Mr. Wackerman recommended that they include something he had seen another municipality do. If the BRA estimated the payback period to be ten years, that would be it. The reason others were doing that was because a lot of the tables submitted by applicants were not panning out the way they were intended. The incremental value was much smaller than anticipated for a lot of reasons. One might be that an applicant overestimated when they did the table, or it could just be the economy. Instead of taking ten years, something could take 20 years, which meant a City would lose ten years of local taxes.

Ms. Morita considered that if a property owner came to them and said something would take ten years to complete, the way the Policy was written, the BRA could agree to ten years, but she felt the trick would be to have a default shorter period of time. If they needed more time, they would have to explain to the BRA why they needed more. Mr. Wackerman clarified that Ms. Morita would like to see the sentence changed to "and construction may be completed within x years of the executed reimbursement agreement." Mr. Wackerman asked how many years they wanted to give the developer for start of construction and completion of construction. Ms. Morita indicated that she would rely on the builders in the group for direction.

Mr. Turnbull stated that it really depended on the nature and extent of a project. If it was a residential development to be built in phases, he could

not imagine it ever being ten years. Ms. Morita said that hypothetically speaking, if they were dealing with an old car dealership next to a gas station, she wondered what a reasonable period of time for that would be.

Mr. Breuckman noted that the Rochester Retail applicant had a Site Plan with four buildings. They might build two or three initially and prep the site but not build the third or fourth building until the market demanded. The BRA would be concerned about the time the environmental cleanup and construction activities were open, and if general construction was another issue entirely. He questioned whether an applicant should get the clean up done quickly. Mr. Wackerman said that he did not believe it had anything to do with the clean up activities. The tax increment financing was a redevelopment tool, and the time limit was recognizing that the applicant had promised to invest so many dollars for so many jobs in the community, and the City had promised to give so many dollars back in incentives. The question would be whether the applicant did what he said he would do. He did not think the applicants would be doing what they said if they did not complete all the buildings. Mr. Breuckman asked if that was where the "ten years and they were done" came into play.

Mr. Turnbull reminded that if an applicant did two of five buildings, there would not be enough increment to collect. If they were timed out, that was the risk the applicant would take. Mr. Breuckman said that if the environmental activities had to be done within four years of the reimbursement agreement, and whenever the applicant said the capture was done it was done, he wondered if that covered the City. He asked if that was a reasonable way forward. Mr. Wackerman agreed that it was a reasonable way to control the timeline, but he strongly suggested that it was an agreement between a municipality and a developer to invest a certain amount of dollars in the City. Whether they ever were paid back was one consideration, and whether it was open-ended or the exposure was capped was another consideration. He felt that there was a duty for a developer to perform the investment that was promised.

Ms. Morita mentioned the timeframe for the dealership and gas station. Mr. Turnbull said that hypothetically, the site could be built in a year to eighteen months. Mr. Turnbull maintained that he would not undertake the project unless he had tenants in hand and planned to build it out, because it was not a spec corner. Mr. Breuckman believed that the two buildings fronting on Rochester were mostly leased. He thought that McDonald's was committed, and he did not think the project would move forward without McDonald's. He was not sure about the middle building on Auburn, although it was a fairly small part of the overall picture. Mr.

Turnbull noted that the applicant owned the land. He was surprised that Mr. Markus did not go back to the sellers and work the costs. The BRA was trying to do the two sites on Hamlin and in the east part of the City. Those were sites that really needed attention. The applicant should have gotten the price adjusted based on the environmental. He thought it was a little bold to assume that the City would hand over money to demo and to deal with their due care, and he still questioned how well thought out the overall plan was.

Chairperson McGarry said that if they looked at the construction costs, the bathrooms and the HVAC, there were the same numbers on both, and it was not a deep dive into what it would cost to do things. Ms. Morita thought they were trying to decide the proper time limits for the Policy. The reason she got on the BRA in the first place was that she had a brownfield in her backyard. She asked the members what they would expect for a cleanup timeframe if they lived next to it. Chairperson McGarry said that it all depended on the project. They needed to have wording in the Policy that allowed them to look at each project and make an intelligent decision about the timeframe.

Mr. Stanley asked if they were trying to tighten the Policy to cover everything. He thought that every proposal should be evaluated on its own case. If they tried to tighten it too much in a Policy, they might reach no end. Someone with a project could make a proposal, and it made sense or it did not, and they could adjust it. He wondered why it was different from other proposals.

Ms. Morita felt that the paragraph handled it when it said, "unless otherwise agreed to in writing." They were trying to figure out the default time period unless they felt it should be longer or shorter. She did not want it to be open-ended. If it said "must be completed within three years of the estimated completion date," it could be years and years.

Mr. Wackerman said that most communities ran afoul when there were people who got incentives and then did not start, or they started and did not finish. It was the proverbial hole in the ground. He thought they should focus on not so much the end date but whether when an applicant came to the City and asked for incentives if they were shovel ready and if they were really viable. If someone did not finish something in five years, the City would not get the revenues, and it would not be a good situation. He recommended that they should put the emphasis on the start.

Ms. Morita asked Mr. Wackerman if he recommended a two-year period -

that is, starting construction within two years of the executed reimbursement agreement. Mr. Wackerman felt that was reasonable. Ms. Morita recalled that the applicants for the Hamlin and Adams site got a Brownfield Plan approved, but then they did not have money for construction bonds. Mr. Wackerman said in that instance, the City should yank a Brownfield Plan. Ms. Morita asked if that was still an open Plan. Chairperson McGarry thought the site was under a Consent Agreement. Mr. Breuckman agreed the site was under Consent, but he did not know if that affected the Brownfield Plan or not. Mr. Wackerman pointed out that although all Brownfield Plans had a statutory limit and had an estimated payback period, none of them expired unless the BRA took action to void. The State did not automatically do anything. Ms. Morita hoped that Mr. Wackerman was not suggesting that they voided the Hamlin and Adams Plan. The Board decided to change the timeframe in the Policy from five years to two and three years to one.

Ms. Morita realized that Mr. Wackerman had cleaned up the language about an escrow requirement, but she wondered if the BRA's expectations could be a little clearer (page 6). It said that the City required a fee for legal and administrative review as well as for verification of expenses. Mr. Wackerman said it could say, "in order to verify expenses." Ms. Morita agreed, and asked if they just needed to discuss legal and administrative review or if it should include financial. She thought of administrative as someone in house, but if an outside auditor or CPA firm was needed for a complicated project, she would not expect City Staff to spend weeks reviewing finances to make sure everything had been paid appropriately. Mr. Wackerman thought that was a good suggestion. In the dozen or so that he had been involved, the waiver of lien was a question of simply matching invoice, check, waiver and line item from the Brownfield Plan. Most people did not delve much deeper than that. Ms. Morita said that she has had to do that on behalf of clients with large construction projects, and she thought they were much less complicated than Madison Park, which she assumed could go on for years and be very complicated.

Chairperson McGarry asked if there were any other questions or comments. Mr. Wackerman indicated that he would make the changes. He asked if he should include a limitation in the payback duration as described in the Brownfield Plan. If someone asked for a ten-year payback, it would be limited to ten years whether someone was paid back or not. Mr. Turnbull felt that was more than reasonable. Chairperson McGarry agreed that it was reasonable, and he also felt that it put the responsibility and risk back on the developer. Mr. Wackerman added that he would include a paragraph.

Ms. Morita asked if the Policy had to go before Council for approval. Mr. Breuckman advised that the BRA approved it. Ms. Morita explained that they did not go through the full process the last time, so she was not sure if it had to go to Council. Mr. Breuckman asked if there was anything in the Statute that required it to go back to Council. Mr. Wackerman said not that he was aware. He recalled that they did hold a joint workshop with Council before, and it was to get everyone on the same page more than to get certain approvals. Mr. Breuckman suggested that they could look at doing a workshop again, or they could make a presentation to Council. Ms. Morita thought it would be great to give a presentation to Council to give them a head's up that the BRA did exist, and they had been working very hard. They would highlight the changes that they were proposing. Council should understand the parameters under which something would or would not be approved by the BRA, because Council would have questions. Ms. Morita asked the next steps.

Mr. Breuckman said they could do the presentation while Mr. Wackerman revised the Policy or after it was adopted. Ms. Morita suggested that the BRA should adopt the Policy first and then present it to Council.

Mr. Chalmers noted that only a Phase I was required when an applicant applied, and he wondered if that was piggybacking off the MDEQ, or if that was something cities required. He felt that a Phase II should always be required to know the location and extent. Mr. Wackerman said that the language said "a Phase I conducted prior to purchase and, if applicable, a BEA within 45 days of purchase." That was the definition of an innocent landowner of a facility. A brownfield could also include a blighted or functionally obsolete building. In those cases, a Phase I might be the only document required because there were no recognized environmental conditions. He said that he would make sure that was what the language said (page two).

Ms. Morita pointed out that the BRA had a meeting scheduled on January 16, 2014, and she asked if the Rochester and Auburn property would be back then. Mr. Breuckman did not think they would have the MDEQ determination of an innocent landowner by that point. Mr. Wackerman said there were two Brownfield Plans for that site, both dated December 5, 2013, but they were different documents. He had asked Ms. Besaw to put a new date on future submittals. Ms. Besaw had asked him if they should drop anything associated with the gas station. He told her that it would make things easier. They might want to come back in January without the MDEQ determination. Ms. Morita wondered if they really thought they

would get help from the City if they were not coming in with an environmental issue. Mr. Wackerman said that was a good question, because they listed asbestos and demo costs. He was not sure, and one of the items in the draft Policy was a preference for environmental mitigation. Mr. Breuckman said that they should have the IRR done, or they would not be going back to the BRA. He asked if the BRA had required applicants in the past to submit an IRR, or if it was new with the Policy. Mr. Wackerman advised that it was specific with the Policy, but he recalled that with Softball City, the applicants did have to show financial need. Ms. Morita believed the applicants to the north had to also. Mr. Wackerman thought there had been a history of asking for financial need, but that codifying it and saying it was an Internal Rate of Return calculation was new. Ms. Morita asked if they still planned to have a January meeting to finalize the Policy. Chairperson McGarry thought that they should, because they had so few meetings.

Mr. Stanley said that with the scarcity of funds from the State and with the priority of having to be a less affluent community, he asked the probability that Rochester Hills would ever get approval for a brownfield project. Mr. Wackerman responded that there were two pots of money. The first was the tax increment financing component. If there was a Brownfield Plan asking for TIF for school mills for environmental cleanup, he thought the City had a good chance. If there was a Brownfield Plan that was asking for school tax capture for non-environmental, he did not think the City would have much of a chance. For the proposed application, the MEDC was not just focusing on less affluent communities; it was focusing specifically on high density, urban core, downtown, multiple-story, redbrick, transportation-oriented development projects. He thought that the answer the applicants got from the MEDC was the answer almost all applicants would get unless it was newsworthy. If the Governor loved it, he felt that it would change things. Regarding the Community Revitalization Program, he did not think they would see a penny. Chairperson McGarry concluded the discussion.

Discussed

ANY OTHER BUSINESS

There was no further business to come before the Brownfield Redevelopment Authority.